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VIA E-MAIL

Arne Simonsen, Chairman  
Delta Protection Commission  
14215 River Road  
Walnut Grove, CA 95690

**Re: Reconsideration of the Old Sugar Mill Project in Clarksburg**

Dear Chairman Simonsen:

Our firm represents the Old Sugar Mill project (the "Project") in the town of Clarksburg, in Yolo County. On March 11, 2008, the Yolo County Board of Supervisors approved modifications to the Old Sugar Mill Specific Plan in response to the remand of the Project from the Delta Protection Commission (alternatively, the "DPC" and the "Commission") on February 22, 2007. We support and concur in the legal and factual reasoning of the Board of Supervisors as set forth in detail in the "Findings of the Yolo County Board of Supervisors Regarding the Old Sugar Mill Project, as Revised, and Consistency with the Land Use and Resource Management Plan and Delta Protection Act," dated March 11, 2008, which are incorporated in full into this letter by this reference. This letter discusses the authority of the Commission with respect to the Project, describes the modifications to the Project since the DPC's remand, and urges the Commission to find that the Project is consistent with the Delta Protection Act (the "Act") and the Resource Management Plan. We believe the Project exemplifies the sensible re-use of a unique aspect of our California Delta heritage that the Commission should promote and encourage.

**I. Promoting the Economic and Cultural Vitality of Existing Delta Communities  
Is a Central Purpose of the Delta Protection Act**

The Old Sugar Mill is a very exciting project. No other land use project in the Delta has ever presented such a special opportunity to reinvent an historic Delta landmark like Old Sugar Mill in Clarksburg. The economic potential of the Project is remarkable. Equally impressive is the lasting cultural investment that the Project represents for the Clarksburg community. The Project promises to transform an abandoned and blighted piece of industrial land into a vibrant neighborhood of wineries, ag-support industries, shops, restaurants and houses. The effect on Clarksburg will be markedly positive.

The Act was created to manage important Delta resources, which include the human resources in Delta communities like Clarksburg. Specifically, the Act states three principal goals: protection of the Delta's unique and fragile environment, the orderly growth of its long-standing communities, and the safety of its residents. (Public Resources Code § 29702.<sup>1</sup>) The review power of the DPC must be administered in the furtherance of these three goals. (§ 29771.) Those who would interpret the Act only as a means to protect natural resources and maintain flood protection, to the exclusion of human settlements, leave out a crucial purpose of the Act: "Assur[ing] orderly, balanced conservation and *development* of delta land resources." (§ 29702, subd. (b) [emphasis added].) As a catalyst for the burgeoning Clarksburg wine region, the Old Sugar Mill exemplifies the type of creative development that the Act was designed to support.

The balance struck in the Act between economic growth, public safety and ecological conservation is also reflected in the Resource Management Plan. A plan was needed, the Legislature declared, "to protect the regional, state and national interests for the long-term agricultural productivity, *economic vitality*, and ecological health of the delta resources[.]" (§ 29707 [emphasis added].) Encouraging economic prosperity is vital to the long-term sustainability of the Delta way of life. The Legislature recognized this fact, declaring "that the cities, towns, and settlements within the delta are of significant historical, cultural, and economic value, and that their continued protection is important to the economic and cultural vitality of the region." (§ 29708.) The Old Sugar Mill is designed to complement and revitalize the existing social institutions of the town of Clarksburg with a modest influx of new residents. These new residents will help to provide an economic "critical mass" within the town, renewing the economic vitality that once existed, but which has faltered since the sugar factory closed.

The pivotal importance of the Act's three-way balancing of development, safety and conservation is further evident in the requirements of the Resource Management Plan. The Act lists fourteen separate requirements of the plan. The first, is to "[p]rotect and preserve the cultural values and economic vitality that reflect the history, natural heritage, and human resources of the delta." (§ 29760 at subd. (b)(1).) The Project will be a showcase for the historic significance, cultural values, and industrious spirit that characterizes Clarksburg and the Delta. Put simply, the Project establishes both a gathering place for existing residents as well as a destination in the Delta where people from throughout the region may come to enjoy the best creations, products and agricultural commodities that the Delta has to offer.

The Project will achieve this entirely within the urban limits of an existing industrial site, sacrificing neither habitat nor agricultural resources. In fact, the Project includes a wildlife viewing area, riverfront access and provides a market for local agricultural commodities. As such, the Project exemplifies precisely the type of development that the Resource Management Plan should encourage. (See *id.* at subd. (b)(11) [directing the DPC to protect against development that consumes habitat and agricultural resources].) Refusing to share in this vision,

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<sup>1</sup> All further statutory references are to the Public Resources Code.

the appellants have urged the Commission to adopt an untenable interpretation of the plan that would eliminate the possibility of using the cultural and historic urban land resources of the Delta to the benefit of its communities. Such a restrictive view defies a central purpose of the Act; encouraging the responsible economic growth of towns like Clarksburg. The economic vitality of these existing communities cannot be maintained without an allowance for some measure of new infill residential and commercial growth.

## **II. The County's Modifications of the Project Are Responsive to the Remand**

### ***A. The Number of Residential Units Has Been Reduced Significantly***

In response to the remand from the DPC, the County has made several important changes to the Project, which support the Project's consistency with the Resource Management Plan. One very significant change is the reduction in the number of residential units. The housing component is critical to the balance of land uses within the Project, and (as stated above) plays an important role in the long-term economic health of the town of Clarksburg. Residential growth in Clarksburg is tightly controlled by County land use policies and an urban limit line. This urban boundary has not been changed since it was officially established over twenty-five years ago.<sup>2</sup> The Project site has been designated for mixed-use development (including between 20 and 30 acres of residential use) since the Clarksburg General Plan was updated in 2001.

Beginning in 2001, our client began meeting with members of the community during the General Plan Update process to design a master plan for redevelopment of the site. The winery and related grape processing facilities were installed first, as the industrial zoning allowed such uses. During the entire planning process that followed, some number of permanent residential units remained a basic component of the Project. Though opinions concerning the appropriate number of new residences have differed, the site has always been viewed as an opportunity to add to the population of Clarksburg. Without the addition of a modest number of residences, the Project would not provide opportunities for workers to live and work within the same community, nor would it provide housing opportunities for the growth of existing Clarksburg families and businesses.

In 2007, amid concerns that the relative density between the Project and the surrounding community were not in sync, a majority of the Commission questioned whether 162 residences were needed. In response, our client has agreed to reduce the number of residences in the Project by twenty-four (24) percent. This was a major sacrifice for a Project that has already suffered an abnormal degree of administrative delays. At 123 units, the Project will contain a residential density that is typical of contemporary development, and is less than the 2006 recommendation of the Clarksburg General Plan Advisory Committee. The reduction in units has been accepted enthusiastically by the local community. In January, the Yolo County Planning Commission

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<sup>2</sup> The Urban Limit Line was first adopted by the County in the Clarksburg General Plan of 1982. Prior documentation shows that the same boundary was reflected in the Clarksburg "Master Plan" of 1959.

voted unanimously to recommend approval of the new Project, a sentiment that was later echoed by unanimous vote of the Clarksburg General Plan Advisory Committee.

This week the Board of Supervisors voted to modify the Project and forward it to the DPC for final review. In its recent deliberations, the density and composition of the housing component remained of paramount concern to the Board. Previously, the Board voted to approve 162 residential units within the Project, in order to maximize the opportunity to accommodate future growth within the urban limit line of Clarksburg without consuming agricultural land. Notably, 75% of the housing that has been built in the Clarksburg General Plan area in the last six years has occurred outside of the urban limit line, many on "ranchette" parcels.<sup>3</sup> In response to the remand, the Board and our client have agreed to lower the number of residences, to a number similar to the recommendation of the Clarksburg General Plan Advisory Committee in 2006. The Board also voted to retain the range of housing styles available in the Project (including a 20% inclusionary housing component) to ensure that the town of Clarksburg will accommodate a diversity of residents into the future.

#### ***B. The Flood Protection Measures Are Unprecedented***

Throughout its deliberation on the risk of flooding associated with the Project, the Board of Supervisors has proceeded with an abundance of caution. Despite the fact that Clarksburg is not in a flood zone, the Board has recognized that the current state of scientific and engineering knowledge warrants a finding that the flood danger in Clarksburg is significant. Neither the State of California nor the Federal Emergency Management Agency (FEMA) has officially designated Clarksburg a "Flood Hazard Area." Therefore, at present, residential construction may occur in the town without any special construction or other flood management requirements. Purchasers of existing residences in Clarksburg also have no obligation to maintain flood insurance, as FEMA flood maps show the town of Clarksburg to be protected from flooding by levees.

Despite the status quo, and despite the fact that the levees surrounding Clarksburg have never been officially determined to be unsafe, Yolo County has taken unprecedented measures to ensure that all future residents of the Project remain safe from flooding. Rather than passively waiting for FEMA to release new flood maps, the County has taken proactive steps to assure the safety of future residents of the Project. Rather than assuming levee integrity until weaknesses are proven, Yolo County has determined that the Project site should be treated as a Flood Hazard Area (and regulated by the County's Flood Damage Prevention Ordinance) unless and until adequate flood protection for the site can be demonstrated. *Such forward planning is unprecedented in the Sacramento Valley.* Yolo County has decided to require the early

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<sup>3</sup> Findings of the Yolo County Board of Supervisors Regarding the Old Sugar Mill Project, as Revised, and Consistency with the Land Use and Resource Management Plan and Delta Protection Act (the "County Findings"), at 7. The County Findings also note that only one home is currently available for purchase within Clarksburg urban area, which is an older (1668 sq. ft.) home currently listed at \$539,000.

implementation of flood protection measures, ahead of FEMA and the Central Valley Flood Protection Board, and has even implemented suggestions of the Sacramento Area Flood Control Agency (SAFCA).<sup>4</sup> The result is a model approach to sustainable redevelopment in a Delta community.

No residential building may be constructed in the Old Sugar Mill Project until the flood protection of the site has been confirmed, or a plan has been prepared to achieve 200-year flood protection. Once a geotechnical evaluation of the levee fronting the Project has been made, our client is required to prepare a local plan for achieving 200-year flood protection. As a component of this plan, our client must contribute toward a broad financing strategy aimed at enhancing flood protection for the entire basin. Regardless of the outcome of this effort, every residence that is constructed in the Project must be elevated and flood-proofed unless existing levees are shown to provide sufficient flood protection. These residences will be elevated in accordance with state and federal requirements reflected in the historic flood control legislation of 2007, Senate Bills 5 and 17 ("SB 5" and "SB 17"), and may occur ahead of the implementation timing required by that legislation.<sup>5</sup>

While the flood protection measures that the County previously required were substantial, the Board has added even greater protection in response to the remand. An earlier, interim level of elevation has been discarded. Now all residential units must be elevated in accordance with the County's Flood Damage Prevention Ordinance. To ensure that this level comports with the best scientific evidence available, the County requires that the Base Flood Elevation be set either by FEMA, or by a registered professional engineer using the best available data, in consultation with the State Department of Water Resources. If the state and federal flood control agencies have accepted the effects of global warming in making flood elevation calculations, including increases to sea level and early snowmelt, this scientific evidence will be taken into consideration when calculating the Base Flood Elevation for the Project.

To argue against the Project, the Natural Resources Defense Council (NRDC) and the Concerned Citizens of Clarksburg (CCC) principally rely, as before, on a flawed interpretation of Levees Policy 3. Despite the application of the County's Flood Damage Prevention Ordinance and other unprecedented flood protection measures, they dismiss the County's efforts to protect public safety, alleging that our client may refuse to implement levee improvements that he

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<sup>4</sup> Many of the original mitigation measures that the County designed in the Environmental Impact Report (EIR) were taken from SAFCA's Sacramento River Floodway Management Plan (FMP).

<sup>5</sup> 2007 legislation (SB 5 and SB 17) renamed the Reclamation Board the "Central Valley Flood Protection Board" and directed the Board to adopt a flood control plan for the Central Valley by July 1, 2012, which must be reflected in the General Plans of Central Valley cities and counties within 24 months of adoption. Additional information concerning the application of this legislation to the Old Sugar Mill Project is available in the County Findings at 9-10.

unilaterally considers infeasible.<sup>6</sup> Apparently, these groups would require flood protection measures regardless of the limitations of economic feasibility or practicability. There can be little doubt that such an approach would have the practical effect of imposing a moratorium on new housing in the Primary Zone. As stated previously, encouraging responsible development is a fundamental purpose of the Act, and one of the principal requirements of the Resource Management Plan is to protect the "economic vitality" of the Delta. (§ 29760 at subd. (a)(1).) A housing moratorium simply cannot be reconciled with the provisions of the Act.

In light of these statutory provisions, Levees Policy 3 should not be read to preclude sensible re-development projects within existing Delta communities, including in-fill residential growth. That policy, like Land Use Policy 4, is aimed at preventing broad-based urbanization of agricultural and open space lands, consistent with the stated requirements of the Act. (§ 29760 at subd. (b)(11).) The re-use of the Old Sugar Mill property is simply the latest adaptation of an urban site that has been developed since the 1930s. The extension of the Clarksburg community into the Project site represents the latest progression in the growth and development of a Delta town with a proud history and unique culture that stretches back over 100 years.<sup>7</sup> It is positively not the kind of suburban sprawl or imprudent "encroachment" suggested by the NRDC and the CCC.

### ***C. The Neighboring Agricultural Lands Will Remain Protected for Future Generations***

The final change to the Project in response to the remand is the expansion of the agricultural buffer on the property and the addition of a berm and hedgerow. The farmland on the west side of Willow Avenue is currently established as a vineyard, which is also the subject of a perpetual conservation easement. This property will likely remain in agricultural production for as long as the Clarksburg community remains. In response to the remand from the Commission, a 300-foot buffer on the Project site has been extended to allow for this vineyard to be re-planted in another crop, should the owner so desire. The application of this buffer on the project site mandates an extensive setback for all non-agricultural buildings, keeping them adequately separated from the agricultural practices on the adjoining parcel. Those operations are somewhat compromised by the presence of four residences on Alexandria Court, west of the Project site. Largely due to the proximity of these residences and other residential uses in the town, the neighboring grower is presently unable to use aerial spraying on nearly all of the property in proximity to the Project. With the extension of the agricultural buffer on the Project

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<sup>6</sup> Letter from Earthjustice to the Yolo County Board of Supervisors, dated March 6, 2008 at 5. In fact, the County will decide whether recommended flood control improvements are feasible, based on the pool of local, state and federal resources identified in a mandatory flood control financing plan.

<sup>7</sup> Historians report intermittent settlement of the Clarksburg area from the 1850s, when Merritt Island was first reclaimed for agricultural use. Clarksburg was officially established as an unincorporated community by the New Holland Land Company in 1920s.

site, and the addition of a combination berm and hedgerow east of Willow Avenue, present and future agricultural uses of the neighboring property will be adequately protected in perpetuity.<sup>8</sup>

### **III. None of the Recommendations of the Delta Vision Blue Ribbon Task Force Are Relevant to the Commission's Consideration of the Project**

The Old Sugar Mill Project is the first land use project to ever be reconsidered by the DPC following a remand, and therefore represents a very important opportunity for the Commission to affirm its purpose. As stated above, the Delta Protection Act and the Resource Management Plan are the only official laws or policies that have legal relevance to the Commission's consideration of the Old Sugar Mill Project. (§ 29771.) The Delta Vision, while certainly a useful document for its coverage of various current public policy considerations, is not a part of the body of law that may be considered in response to the remand. The requirements of the Resource Management Plan are stated in the Act, and codified in state regulations. Nevertheless, the NRDC and the CCC have argued that the Delta Vision compels the Commission to reject certain land use proposals in the Delta.

Notwithstanding the fact that the Delta Vision does not have strict legal relevance in this matter, the NRDC and the CCC read Delta Vision recommendation number eleven to suggest that a moratorium be imposed on new building in Clarksburg. One of the twelve co-equal recommendations of the Blue Ribbon Panel, it states: "Discouraging inappropriate urbanization of the Delta is critical both to preserve the Delta's unique character and to ensure adequate public safety." Citing flood hazards and ecological resources, the Delta Vision urges decision-makers like the DPC to reject land use proposals for large-scale residential development. Given the fragility of Delta resources and unavoidable risk of flooding, local governments should "avoid inappropriate urbanization of the Delta." *We agree.* The DPC should reject major new urbanization in the Delta. Delta land that has not been put to urban use, and which remains devoted to agriculture and open space, should not be urbanized.

Nevertheless, there are existing urban places in the Delta, such as the site of the Old Sugar Mill Project in Clarksburg, where human settlement has taken root and shaped the land for many decades. Should these places not be allowed to develop, re-develop and thrive? One need not refer to the Delta Vision for the answer, for it has already been provided in the Delta Protection Act: "the cities, towns and settlements of the delta are of significant historical, cultural, and economic value and . . . their continued protection is important to the economic and cultural vitality of the region." (§ 29708.) These communities will not be protected if they are starved of new residents and allowed only to wither on the vine.

The Old Sugar Mill Project is a creative and unique re-use opportunity within the existing

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<sup>8</sup> Letter from Agricultural Commissioner for Yolo County Rick Landon to the Yolo County Board of Supervisors, dated March 11, 2008.

urban limit line of an established Delta community. As such, it does not belong in the same category as the "urbanization" condemned by the Delta Vision, and vilified by the NRDC. Not only does the urban conversion of agriculture and open space exacerbate the problem of flood control, but such urban "sprawl" also weakens the Delta economy by threatening the long-term viability of agriculture.<sup>9</sup> These same policy considerations support the locating of development in the existing Delta communities where such impacts can be minimized. California made that commitment when it passed the Delta Protection Act.

#### IV. Conclusion

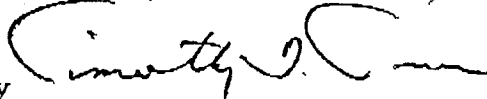
The Delta Protection Act emphasizes three basic goals: resource management, orderly development, and flood protection. In furtherance of its responsibility to care for the long-term prosperity of Delta residents, the Act requires the DPC to protect the "economic vitality" of its existing Delta communities, including those in the Primary Zone. Maintaining this balance is critical to the Commission's reconsideration of the Old Sugar Mill Project.

In response to the remand from the DPC, the County has made significant changes to the Old Sugar Mill, principally by reducing the number (and density) of the residential units. The County has also increased the extent that these units must be protected from floodwater, through the early implementation of unprecedented flood protection measures. The extension of the agricultural buffer and the addition of a berm and hedgerow will ensure the future viability of neighboring agricultural practices.

The NRDC and the CCC cite the Delta Vision to support their demand for a moratorium on residential development in the Primary Zone. Put simply, the Delta Vision is not legally relevant to the Commission's determination of this Project. Even so, the recommendation in the Delta Vision against new "urbanization" in the Delta does not preclude the sensible re-use of existing urban land, such as proposed in this Project. In furtherance of its obligation to protect the prosperity of the people of the Delta, we urge the Commission to find that the modified Project conforms to the Resource Management Plan.

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By 

Timothy D. Taron

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<sup>9</sup> Context Memorandum: Agriculture in the Delta, Ken Trott, August 10, 2007, at 16. "Most of the urbanization of agricultural land is occurring in the Secondary Zone. . . . In the Primary Zone, urban sprawl is not a significant factor in the loss of agricultural land. However, . . . ranchette development was [found to be] a significant cause of non-urban agricultural land loss between 2002-2004."